

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ALBERTVILLE

In the Matter of Hoey Outdoor
Advertising, Inc.

**ORDER ON AFFADAVIT
OF PREJUDICE**

The above-entitled matter was submitted for review before Chief Administrative Law Judge Raymond R. Krause ("ALJ") on October 5, 2009.

Marc J. Manderscheid, Briggs and Morgan, who represents one of the parties in this case, submitted an affidavit of prejudice in the above-entitled matter. The affidavit alleged that ALJ Manuel Cervantes, who was assigned to this matter, is prejudiced and should be disqualified.

Attorney Manderscheid notes that Judge Cervantes served as the City Attorney for the City of St. Paul during the period from 2002 to 2006. Attorney Manderscheid notes also that during this period Attorney Manderscheid had from time to time been retained as outside counsel to represent the City of St. Paul. At some point during this period he and ALJ Cervantes had a disagreement over the handling of an unnamed case. Attorney Manderscheid alleges that because of this disagreement, ALJ Cervantes should be removed from this matter pursuant to Minn. R. Judicial Conduct 2.11.

Chapter 14 provides for the procedures in hearings before the Office of Administrative Hearings. Minn. R. 1400.6400 deals specifically with the procedure for disqualification of an administrative law judge. This rule requires "... an affirmative showing of prejudice or bias. A judge may not be removed merely because of prior rulings on prior cases."

Here, there is an allegation that because of a disagreement between two counsel representing the same client on the handling of the case, the "in-house" counsel who is now an ALJ should be removed for cause. This allegation alone is insufficient to meet the standard in Minn. R. 1400.6400. Attorneys who share duties in representing a client regularly disagree on how to proceed. The fact that these two counsel disagreed on some unidentified case at some time at least three years ago is not a showing of prejudice or bias. Although Minn. R. Judicial Conduct 2.11 differs in its language from Minn. R. 1400.6400 it requires a similar showing of bias or prejudice. The allegation in this case meets neither of the applicable standards. The motion for disqualification is therefore denied.

At the request of the ALJ Cervantes, this case is being reassigned to another ALJ.

Dated: October 7, 2009

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

cc: Judge Manuel Cervantes
Assistant Chief Judge Bruce Johnson
Michael C. Couri
Docket Coordinator